IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 460 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
TARABEN,W/O CHANDULAL NEMCHANDSHAH & 1 - Defendant(s)

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Appearance :

MR AJAY R MEHTA for Appellant(s) : 1,
MR JV JAPEE for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 24.09.1997 passed by the Motor Accident Claims Tribunal (Aux.), Sabarkantha at Himmatnagar in M.A.C.P. No. 806 of 1990 whereby the same was allowed.

2. The short facts of the case are that on 24.06.1990 at about 12.00 O'clock the original appellant was walking on the road to Prantij from his Village Palasar. At that time one motor cycle bearing Registration No. G.J.F. 9312 driven by the

original opponent No. 1 came in full speed from Palasar and dashed with the original appellant. As a result of this accident the original appellant sustained body injury and received fractured on his left leg. Therefore original appellant filed claim petition claiming compensation to the tune of 15,000/-. The Tribunal after hearing the parties passed the aforesaid order.

3. Learned advocate for the present appellant has submitted that the person who was driving the vehicle was not having requisite licence required under the condition of the policy. He further submitted that since the vehicle was driven by a person who had no licence to drive the vehicle there was no question of the appellant Insurance Company being liable to satisfy the award.

3.1 He further submitted that tribunal ought to have appreciated that driving licence which was produced before the tribunal also clearly indicated that the **driver was licenced to drive a light motor vehicle and was not licenced to drive a motor cycle.**

4. I have gone through the judgement and award of the Tribunal. The issue involved in this appeal is clearly covered by the decision of the Division Bench of the Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Kusum Rai and others reported in 2006 ACJ 1336*** wherein it is held in para 14 as under:

> "Although, thus, we are of the opinion that the appellant was no liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction under the Article 136 of the *Constitution of India* but we direct that the appellant may recover the amount from the owner in the same manner as was directed in Nanjappan, 2004 ACJ 721 (SC)."

5. In view of the above, the Insurance Company cannot be held liable to pay the amount of compensation in the present case as the driver was not holding a valid licnece at the time of the accident. The award passed by the Tribunal qua liability of insurance company is therefore erroneous and is required to be modified accordingly.

6. In the premises aforesaid the appeal is allowed accordingly. The F.D.R. lying with the tribunal shall paid to the appellant. It is made clear if it is withdrawn by the original claimants, it will not be recovered. It shall be open for the insurance company to recover the amount from the owner. The award of the tribunal is modified. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*